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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DAVID AND NATASHA WIT, on behalf of) Case No. 3:14-CV-02346-JCS
themselves and all others similarly situated,)
BRIAN MUIR, on his own behalf and)
on behalf of all others similarly situated,) **PROPOSED INTERVENOR**
BRANDT PFEIFER, on behalf of the Estate of) **PLAINTIFF LINDA TILLITT'S**
his deceased wife, Lauralee Pfeifer, and all others) **NOTICE OF MOTION AND**
similarly situated, LORI FLANZRAICH,) **MOTION TO INTERVENE;**
on behalf of her daughter Casey Flanzraich and all) **MEMORANDUM OF POINTS AND**
others similarly situated, and CECILIA) **AUTHORITIES IN SUPPORT**
HOLDNAK, on behalf of herself, her daughter) **THEREOF**
Emily Holdnak, and all others similarly situated,)

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH)
(operating as OPTUMHEALTH BEHAVIORAL)
SOLUTIONS),)

Defendant.

) Hearing Date: February 12, 2016
) Time: 9:30 A.M.
) Judge: Hon. Joseph C. Spero
) Courtroom: G
) Action Filed: May 21, 2014

PROPOSED INTERVENOR PL.'S MOT.
TO INTERVENE; MEMO. OF P&A IN SUPPORT
CASE NO. 3:14-CV-02346-JCS

TABLE OF CONTENTS

	Page
NOTICE OF MOTION AND MOTION	1
ISSUES TO BE DECIDED	1
MEMORANDUM OF POINTS AND AUTHORITIES	1
INTRODUCTION	1
STATEMENT OF FACTS	2
ARGUMENT	5
I. Proposed Intervenor Has Independent Grounds for Jurisdiction.....	6
II. Proposed Intervenor’s Motion is Timely	6
III. Proposed Intervenor Possesses Claims that Share Common Questions of Law and Fact.....	8
IV. Proposed Intervenor Will Contribute to the Efficient Litigation of this Case.....	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

Page

Cases

Cal. Dump Truck Owners Ass’n v. Nichols,
275 F.R.D. 303 (E.D. Cal. 2011) 6

Ctr. for Biological Diversity v. EPA,
No. 11-cv-00293-JCS, 2013 WL 1729573 (N.D. Cal. Apr. 22, 2013) 5

Donnelly v. Glickman,
159 F.3d 405 (9th Cir. 1998) 9

In re JDS Uniphase Corp. Sec. Litig.,
No. C 02-1486 CW, 2005 WL 2562621 (N.D. Cal. Oct. 12, 2005) 7

Kamakahi v. Am. Soc. for Reproductive Medicine,
No. 11-cv-01781-JCS, 2015 WL 1926312 (N.D. Cal. Apr. 27, 2015) 7

Munoz v. PHH Corp.,
No. 1:08-cv-0759-AWI-BAM, 2013 WL 3935054 (E.D. Cal. July 29, 2013) 6

Nw. Forest Res. Council v. Glickman,
82 F.3d 825 (9th Cir. 1996) 6

Spangler v. Pasadena City Bd. of Educ.,
552 F.2d 1326 (9th Cir. 1977) 5, 9, 10

United States v. City of Los Angeles, Cal.,
288 F.3d 391 (9th Cir. 2002) 5

Venegas v. Skaggs,
867 F.2d 527 (9th Cir. 1989) 5, 9

Statutes

28 U.S.C. § 1331 6

Other Authorities

6 *Moore’s Federal Practice* (Matthew Bender 3d ed. 2015) 7, 8

C. Wright, A. Miller & M. Kane, 7C *Federal Practice & Procedure* (3d ed. 2015) 6

Rules

Fed. R. Civ. P. 24(b) 9

1 Fed. R. Civ. P. 24(b)(1)(B) 5

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on February 12, 2016 at 9:30 a.m., or as soon thereafter as
4 this matter may be heard, in Courtroom G, 15th floor, 450 Golden Gate Avenue, San Francisco,
5 California, before the Honorable Joseph C. Spero, Linda Tillitt will and hereby does move to
6 intervene in this action. Tillitt moves to intervene on behalf of herself, her deceased son Maxwell
7 Tillitt, and all others similarly situated. This motion is made pursuant to Federal Rule of Civil
8 Procedure 24, and is based on this Notice of Motion and Motion, the Memorandum of Points and
9 Authorities in Support of the Motion, the proposed Complaint in Intervention attached as Exhibit
10 A thereto, the [Proposed] Order, any oral argument heard by the Court, such additional evidence
11 as may be submitted to the Court, and such other matters as the Court deems proper.
12

13 **ISSUES TO BE DECIDED**

14 Whether Linda Tillitt may intervene in this action to protect her interests, her deceased
15 son's interests, and the interests of class members relating to Defendant's refusal to provide
16 coverage for the residential treatment of her son Maxwell Tillitt, which led to Maxwell Tillitt's
17 death from a drug overdose.
18

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **INTRODUCTION**

21 Like current Plaintiff Brandt Pfeifer, whose late wife Lauralee forewent additional
22 residential treatment for her serious alcohol addiction after it became clear that Defendant would
23 not provide further coverage, Prospective Intervenor Linda (DeeDee) Tillitt experienced
24 Defendant's denial of coverage for her son Max's medically necessary, and perhaps life-saving,
25 residential treatment for his serious drug abuse disorder based on its application of its overly-
26 restrictive internal benefit determination guidelines for substance abuse treatment. And like
27

28 PROPOSED INTERVENOR PL.'S MOT.
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1 Lauralee Pfeifer, Max Tillitt tragically died due to his substance abuse when he relapsed soon
2 after being forced to leave residential treatment due to Defendant's denial of coverage.

3 In short, the Prospective Intervenor Linda Tillitt has been grievously harmed by Defend-
4 ant's misconduct. The harm she has suffered is identical to the harm suffered by the current
5 Plaintiffs in this case, and of the putative class members those Plaintiffs seek to represent. The
6 Prospective Intervenor accordingly seeks to intervene in this action, and to join the current
7 Plaintiffs in bringing her complaint against Defendant on behalf of herself, her deceased son
8 Maxwell Tillitt, and all others similarly situated.

9
10 Because it would be hard to envision a more motivated class representative than a mother
11 fighting to make sure no parent needlessly experiences the staggering grief of losing a child,
12 because this motion is timely—coming less than four months after Max Tillitt's tragic death
13 following Defendant's denial of coverage for his continued treatment—and because this motion
14 will not prejudice Defendant in any way, the Court should grant the Prospective Intervenor leave
15 to join this lawsuit as a named plaintiff.

17 STATEMENT OF FACTS

18 This action commenced in May, 2014, when Plaintiffs filed their original complaint
19 against UBH and United Healthcare Insurance Company. In July 2014, the parties stipulated to
20 Plaintiffs' filing an amended complaint, and on August 18, 2014, Plaintiffs filed an amended
21 complaint against UBH alone (the First Amended Complaint ("FAC")). As set forth in the FAC,
22 each Plaintiff was the beneficiary of an employer-sponsored health plan covered by ERISA that
23 included coverage for mental health and substance abuse treatment commensurate with generally
24 accepted standards in the medical community. FAC ¶¶ 1, 2, 13. Plaintiffs and their relatives were
25 entitled to coverage for residential care to treat their serious mental health and substance abuse
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1 problems, but UBH wrongfully denied their claims. FAC ¶¶ 9, 10-15, 199-200. UBH employed a
2 two-pronged approach to deny Plaintiffs and other claimants benefits to which they were
3 entitled. First, UBH promulgated improperly restrictive benefit determination guidelines
4 pursuant to which it denied Plaintiffs' claims for coverage, and second, UBH denied some claims
5 even when they satisfied UBH's restrictive residential treatment guidelines. FAC ¶ 15. Plaintiffs
6 bring their claims against UBH on an individual and class basis.

7
8 After the filing of the FAC, UBH filed a motion to dismiss, which this Court denied in
9 November 2014. Since then, the parties have conducted discovery relating to class certification.
10 Plaintiffs have not yet moved for class certification. Linda Tillitt seeks to intervene in the action
11 at this time.

12 Linda Tillitt is a participant in a self-funded, large group plan sponsored by Lockton, Inc.,
13 which is subject to ERISA (the "Lockton Plan"). (Ex. A, Complaint in Intervention at ¶ 42.)
14 UBH adjudicates claims under the Lockton Plan. (*Id.* at ¶ 15.) The Lockton Plan's mental health
15 and substance disorder benefits include residential treatment, on an in- and out-of-network basis.
16 (*Id.* at ¶¶ 46-47.) Linda Tillitt's son Maxwell Tillitt ("Max") was a beneficiary under the Lockton
17 Plan. (*Id.* at ¶ 42.)

18
19 Max struggled with substance use disorder and bipolar disorder from an early age. (*Id.* at
20 ¶ 48.) On June 18, 2015, Max was admitted to Beauterre Recovery Institute ("Beauterre"), a state
21 licensed residential treatment facility that specializes in the treatment of persons with chemical
22 substance abuse and mental health disorders. (*Id.*) Max was admitted to Beauterre for treatment
23 of co-occurring substance use disorder, bipolar disorder, and sleep disorder. (*Id.*) Upon Max's
24 admission, Beauterre performed a Comprehensive Assessment of Max. (*Id.* at ¶ 49.) Max
25 reported that he had participated in rehabilitation programs seven or eight times and relapsed
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1 after each rehabilitation program. (*Id.*) In 2014, he successfully completed an inpatient
2 detoxification and rehabilitation program, and he followed that program with his longest period
3 of sobriety since his substance use disorder began; he was sober for seven weeks. (*Id.*) Max
4 stated that his bipolar disorder and struggles with sleep made it difficult for him to maintain
5 sobriety. (*Id.*) The Comprehensive Assessment found that Max presented with severe disorders
6 related to the use of alcohol, cannabis, opioids (including heroin), and stimulants (including
7 amphetamines and cocaine). (*Id.* at ¶ 50.) The assessment found that Max had a high risk of
8 relapse and no recognition or understanding of relapse and recidivism issues. (*Id.*) It further
9 found that Max had a severe lack of impulse control and coping skills and frequent thoughts of
10 suicide. (*Id.* at ¶ 51.) Max reported two past suicide attempts, both times by overdosing on drugs.
11 (*Id.*) The assessment also noted that Max lacked employment and relied on his divorced parents,
12 was on probation, that his recovery environment was “chronically antagonistic,” and that Max
13 “lack[ed] insight into how to build and maintain structured daily living, as well as how to nurture
14 and access a sober support network in recovery.” (*Id.* at ¶ 52.) Finally, the assessment noted that
15 Max’s motivation for change was unknown and that he “[d]isplay[ed] inconsistent compliance,
16 minimal awareness of either [his] addiction or mental disorder, and [was] minimally
17 cooperative.” (*Id.* at ¶ 53.)

20 By July 10, Max showed some progress but still struggled with cravings for heroin,
21 unstable health, and frequent thoughts of suicide or harm to others. (*Id.* at ¶ 66.) Nevertheless,
22 UBH terminated coverage for Max’s treatment as of July 9, 2015. On July 10, 2015, Beauterre
23 requested an urgent appeal of the denial, which UBH denied on July 13, 2015. (*Id.* at ¶¶ 67-68.)
24 UBH’s denials were based on UBH’s application of its overly restrictive Coverage
25 Determination Guidelines and Level of Care Guidelines, which are inconsistent with generally
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1 accepted standards of medical practice. (*Id.* at ¶ 38.) On July 13, 2015, Max was discharged from
2 Beauterre. (*Id.* at ¶ 72.) Because UBH terminated coverage so abruptly, the facility had no
3 discharge plan in place at that time. (*Id.*) Max then relapsed. (*Id.* at ¶ 73.) On September 26,
4 2015, Max died of a drug overdose at the age of 21. (*Id.*)

5 6 **ARGUMENT**

7 The court may permit intervention under Federal Rule of Civil Procedure 24(b)(1)(B),
8 which provides that “on timely motion, the court may permit anyone to intervene who . . . has a
9 claim or defense that shares with the main action a common question of law or fact.” The Ninth
10 Circuit has set forth the following three criteria for permissive intervention: (1) independent
11 grounds for jurisdiction; (2) the motion to intervene is timely; and (3) the applicant’s claim or
12 defense and the main action have a question of law or question of fact in common. *United States*
13 *v. City of Los Angeles, Cal.*, 288 F.3d 391 (9th Cir. 2002); *see also Ctr. for Biological Diversity*
14 *v. EPA*, No. 11-cv-00293-JCS, 2013 WL 1729573, at *5 (N.D. Cal. Apr. 22, 2013). When
15 presented with a motion for permissive intervention, a court also may consider factors such as
16 undue delay or prejudice to the parties, the adequacy of representation by existing parties,
17 judicial economy, *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989), and other related
18 considerations. *See Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)
19 (factors include the intervenors’ interest in the litigation, their standing to raise issues, their
20 claims’ relation to the merits of the case, whether intervention will prolong or unduly delay the
21 litigation, “and whether parties seeking intervention will significantly contribute to the full
22 development of the underlying factual issues in the suit and to the just and equitable adjudication
23 of the legal questions presented.” (footnotes omitted)). As set forth below, Proposed Intervenor
24 has jurisdictional grounds for her claims, her motion is timely, and she has claims that share with
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1 the main action common questions of law and fact. In addition, other factors a court may
2 consider all point in favor of intervention here.

3 **I. Proposed Intervenor Has Independent Grounds for Jurisdiction**

4 Proposed Intervenor has independent grounds for jurisdiction based on 28 U.S.C. § 1331,
5 which provides for this Court’s jurisdiction over claims brought pursuant to federal statutes.
6 Proposed Intervenor brings claims under ERISA, the same statute that gives rise to Plaintiffs’
7 claims. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 and this element of permissive
8 intervention is satisfied. *See Cal. Dump Truck Owners Ass’n v. Nichols*, 275 F.R.D. 303, 309
9 (E.D. Cal. 2011) (finding jurisdictional element of permissive intervention satisfied as the court
10 had an independent ground for jurisdiction under 28 U.S.C. § 1331); C. Wright, A. Miller & M.
11 Kane, 7C *Federal Practice & Procedure* § 1917 (3d ed. 2015) (“In federal-question cases there
12 should be no problem of jurisdiction . . . when one seeking to intervene as a plaintiff relies on the
13 same federal statute as does the original plaintiff.”).

14 **II. Proposed Intervenor’s Motion is Timely**

15 The following three criteria determine whether a motion is timely: “(1) the stage of the
16 proceedings; (2) whether the parties would be prejudiced; and (3) the reason for any delay in
17 moving to intervene.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836-37 (9th Cir. 1996).

18 Because this case remains in the class discovery stage, the early stage of the proceedings
19 weighs in favor of intervention. Courts in the Ninth Circuit routinely allow intervention where,
20 as here, discovery is ongoing and dispositive motions have not been filed. *See, e.g., Munoz v.*
21 *PHH Corp.*, No. 1:08-cv-0759-AWI-BAM, 2013 WL 3935054, at *7 (E.D. Cal. July 29, 2013)
22 (stage of proceedings weighed in favor of intervention where discovery was ongoing, a deadline
23 for dispositive motions had not been set, and a scheduling order establishing a trial date had not
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1 been entered, even though case had been pending for five years); *In re JDS Uniphase Corp. Sec.*
2 *Litig.*, No. C 02-1486 CW, 2005 WL 2562621, at *4 (N.D. Cal. Oct. 12, 2005) (despite the fact
3 that more than three years had passed since the filing of the original complaint, court found that
4 the stage of the proceedings weighed in favor of granting the motion to intervene where the
5 proceedings were “still at a relatively early stage: the class ha[d] not yet been certified; discovery
6 [wa]s still underway; and the deadline for dispositive motions [wa]s not yet imminent.”). The
7 crucial question is whether proceedings of substance have occurred, and here, they have not. *See*
8 *6 Moore’s Federal Practice* § 24.21[1], at 83-84 (Matthew Bender 3d ed. 2015) (“The mere
9 passage of time, in itself, does not render a motion untimely; rather, the important question
10 concerns actual proceedings of substance on the merits.”).

12 Intervention would not prejudice UBH. This Court has noted that “prejudice is evaluated
13 based on the difference between timely and untimely intervention—not based on the work
14 Defendants would need to do regardless of when [proposed intervenors] sought to intervene.”
15 *Kamakahi v. Am. Soc. for Reproductive Medicine*, No. 11-cv-01781-JCS, 2015 WL 1926312, at
16 *4 (N.D. Cal. Apr. 27, 2015). As stated above, this litigation remains at the early stages and
17 intervention will not force UBH to re-litigate substantive issues. To the extent UBH claims that
18 both it and Proposed Intervenor will require discovery and depositions regarding Proposed
19 Intervenor’s claims before the end of class discovery, “[t]he actual work that will need to be
20 done as a result of intervention is almost entirely the same work that would have been required if
21 Proposed Intervenor had intervened earlier.” *Id.* Moreover, Proposed Intervenor is represented
22 by the same counsel as the Named Plaintiffs in this action and will work with counsel to
23 streamline discovery regarding her claims.
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Any delay in Proposed Intervenor's motion is understandable and excusable, and does not weigh against intervention. Proposed Intervenor's claims arose after the action commenced, and Proposed Intervenor worked diligently to exhaust her appeals to UBH while simultaneously dealing with the burdens of managing her child's mental health treatments. UBH's denial of coverage for Max Tillitt occurred in July 2015, and Max Tillitt was discharged from residential treatment shortly thereafter. Max Tillitt died of a drug overdose on September 26, 2015, leaving his mother to see to his affairs (including the grave injustice that ultimately cost Max his life). Ms. Tillitt seeks to intervene at this time on her own behalf, on behalf of her deceased son, and on behalf of similarly situated individuals. Ms. Tillitt has worked diligently under dire circumstances to join this action in an efficient way.

III. Proposed Intervenor Possesses Claims that Share Common Questions of Law and Fact

Like the Plaintiffs in this action, Proposed Intervenor brings claims related to UBH's wrongful denials of coverage based on UBH's application of its overly-restrictive Coverage Determination Guidelines and Level of Care Guidelines. "A common question of law or fact routinely exists if the intervenor has a claim against the defendant that is identical to a claim asserted by the existing plaintiff." 6 *Moore's Federal Practice* § 24.11 (Matthew Bender 3d ed. 2015). Like Plaintiffs, Proposed Intervenor alleges that UBH has breached and continues to breach its obligations under ERISA by promulgating unduly restrictive guidelines and then denying claims based upon those restrictive guidelines. The central common question of fact between Plaintiffs' and Proposed Intervenor's claims is whether UBH promulgated improperly restrictive benefit determination guidelines. The related central question of law is whether these improperly restrictive guidelines and the wrongful denials of coverage based on those guidelines constitute violations of ERISA.

1 Permissive intervention is appropriate where, as here, the claims are the same and the
2 common questions of law and fact questions will require the same factual proof on UBH's
3 policies and procedures, and the implementation of the same. *Cf. Donnelly v. Glickman*, 159 F.3d
4 405, 412 (9th Cir. 1998) (upholding denial of permissive intervention where plaintiffs' claims
5 and intervenors' claims shared "no common factual proof"). Simply put, there are no material
6 factual or legal questions pertinent to the Prospective Intervenor's claims against UBH that are
7 not also at issue in this case. Ms. Tillitt is unquestionably a member of the putative class in this
8 case, and the putative class that Ms. Tillitt seeks to represent is identical to the putative class in
9 this case, and would include the named plaintiffs in this case. Accordingly, the case for
10 permissive intervention could not be stronger.

12 **IV. Proposed Intervenor Will Contribute to the Efficient Litigation of this Case**

13 While Rule 24(b) vests discretion in the Court to determine the fairest and most efficient
14 method of handling a case, here "all of the considerations which guide the exercise of judicial
15 discretion clearly weigh in favor of permissive intervention." *Venegas*, 867 F.2d at 530. In
16 addition to the three requirements for permissive intervention set forth *supra*, the Ninth Circuit
17 has evaluated whether intervention would "unduly delay or prejudice the adjudication of the
18 rights of the original parties," whether the movant's interests are "adequately represented by
19 existing parties," and whether the intervention would contribute to judicial economy. *Id.* at 530-
20 31; *see also Spangler*, 552 F.2d at 1329 (setting forth similar considerations).

23 Here, Proposed Intervenor will not cause delay or prejudice to the Plaintiffs or Defend-
24 ant. Proposed Intervenor seeks to join this action during the class discovery stage and will work
25 with Defendant to ensure expeditious discovery in advance of the class certification motion.
26 Proposed Intervenor and Plaintiffs will not require any additional time for discovery, nor will the
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1 presence of Proposed Intervenor retread any decided issues in this case. As to the question of
2 whether the current Plaintiffs can adequately represent Proposed Intervenor's claims, while
3 Proposed Intervenor is represented by the same counsel as Plaintiffs and believes that strong
4 grounds exist for class certification, at present this action contains only individual claims brought
5 by Plaintiffs. Proposed Intervenor has her own individual claims, and the Plaintiffs currently
6 cannot represent those claims. Finally, intervention will contribute to judicial economy. Proposed
7 Intervenor could bring separate claims in her home state alleging substantially the same conduct
8 by UBH that Plaintiffs allege. Yet Proposed Intervenor seeks to conserve judicial resources by
9 joining this pending action in one location. Discovery into UBH's restrictive guidelines and their
10 processes for denying claims will only need to occur once, and if a class is certified, Proposed
11 Intervenor will be able to participate in one comprehensive action regarding UBH's conduct.
12 Finally, Proposed Intervenor will contribute to the full development of this action. As
13 demonstrated by the factual basis for her claims, she is motivated to fully develop the record in
14 this case and arrive at a just and equitable outcome. *Spangler*, 552 F.2d at 1329.
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17 CONCLUSION

18 For the reasons set forth above, Proposed Intervenor's request to intervene should be
19 granted.
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1 Dated: January 7, 2016

Respectfully submitted,

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3 /s/ D. Brian Hufford

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